IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 489 OF 2003

IN

SUMMARY SUIT NO. 358 OF 2003

Nandu R. Manial .. Plaintiff

versus

Devidutta Bajaj Sons & Ors. .. Defendants

...

Mr.H.V. Chande for the plaintiff.

None for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 2nd March 2005.

P.C.:

1. Heard the learned counsel for the plaintiff. None present for the defendant.

2. The learned counsel for the plaintiff hands in affidavit of service. Affidavit is taken on record. After the receipt of the Summons for Judgement, the defendant no.3 has filed an affidavit in reply

stating that the affidavit has been filed on behalf of all the defendants. As no affidavit in reply has been filed by any of the other defendant, affidavit of defendant no.3 is taken as an affidavit on behalf of all.

3. The defendant no.1 is a proprietary concern of which defendant no.2 is the proprietor and defendant no.3 is a proprietary concern of which the defendant no.4 is the proprietor. For valuable consideration, the defendant no.1 drew a bill of exchange for Rs.3,00,000/- payable to the plaintiff. The bill was accepted by defendant no.3. The defendant nos.2 and 4 have signed the bill of exchange as the drawer and acceptor respectively for defendant nos.1 and 3. In para no.3 of the affidavit in reply, the defendant has admitted that a loan of Rs.3,00,000/- was received by the defendant no.1 from the plaintiff through a broker Harish. He has further admitted that the bill of exchange was executed by the defendant and given as a security to the plaintiff. The defendant however has pleaded that the loan has been repaid through the broker. Not even a prima facie evidence has been produced about the repayment. No receipt has been produced nor an extract of account produced to show that the money has been

repaid. The plaintiff has admittd repayment of Rs.80,500/- only.

4. In the circumstances, I am satisfied that the defendants have no substantial defence to the suit. However, merely as an act of mercy, I am inclined to grant conditional leave to the defendants subject to deposit of the principal sum without interest. Hence, I pass the following order:

5. The defendants are granted conditional leave to defend the suit subject to depositing of the principal sum of Rs.2,19,500/- in the Court within a period of four weeks. On such deposit, the plaintiff shall be entitled to withdraw the same by furnishing security to the satisfaction of Prothonotary and Sr. Master. On failure to deposit, the plaintiff shall have liberty to apply. On deposit of the money, the suit shall stand transferred to the list of commercial causes. The defendants shall file written statement within a period of one month.

D.G. KARNIK,J